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IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Cr. A. No. 1028 /2003

APPELLANT
(IN JAIL)

: Mangu Sodhi, S/o. Hunga Sodhi
Aged 38 years, R/o. Village
Mokpal, P.S. Kubakonda
Distt. Dantewada (C.G.)

3678/03
Filed on 22/9/03
by Shri Sanjeet Mushy Advocate

VERSUS

RESPONDENT
R. to D.R.P.
22/9/03

: The State of Chhattisgarh
Through P.S. Bhadiras
District Dantewada (C.G.)

CRIMINAL APPEAL U/S. 374 (2) OF Cr.P.C.

AGAINST THE JUDGEMENT DATED 21.03.2003 PASSED IN S.T. NO. 218/~~2002~~ 2002 BY THE FIRST ADDITIONAL SESSIONS JUDGE BASTAR AT JAGDALPUR (C.G.)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1028 of 2003

Appellant : Mangu Sodhi

Vs.

Respondent : State of Chhattisgarh

Miss Sangeeta Mishra, learned counsel for the appellant.

Shri M.P.S. Bhatia, learned P.L. for the State/respondent.

ORAL JUDGMENT

(03.04.2006)

Per L.C.Bhadoo, J

The matter is listed for hearing on M.Cr.P.No. 2939/2003, for suspension of sentence and grant of bail. However, with the consent of the parties, the matter is heard finally.

2. By this appeal under Section 374(2) of the Criminal Procedure Code the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 21st March 2003 passed by learned First Additional Sessions Judge, Bastar, Jagdalpur in S.T. No. 218/2002 whereby the learned First Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC sentenced him to undergo imprisonment for life.

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3. Case of the prosecution, in brief, is that on 31st March 2002 accused Mangu Sodhi came to village – Mokpal along with 15-20 persons and demanded the marriage expenses in terms of one goat and Rs. 4,000/- from Joga Madvi. As deceased Joga Madvi was not able to arrange so much amount, Panchayat could not settle the matter and the villagers left for their respective residence but the accused remained there. At about 8.30 p.m. he abused Joga Madvi and attacked him with fists, kicks and club as a result of which Joga Madvi became unconscious and remained unconscious for the whole night and died in the morning. Thereafter, Panchayat was convened and the matter was reported on 03.04.2002. Merg intimation (Ex.P-3) was given by complainant Kosi Madvi (wife of the deceased). Based on that First Information Report (Ex.P-4) at Cr. No. 07/2002 in Police Station – Gaadiraas was registered under Section 302 of the IPC. Investigating Officer left for the scene of occurrence and after giving notice (Ex.P-9) to the Panchas, he prepared the Panchanama Ex.P-10 of the body of Joga Madvi. Site plan (Ex.P-14) was prepared. During police custody the accused gave memorandum (Ex.P-7) and in pursuance of that he got recovered bamboo club under Ex.P-8. Body of Joga Madvi was sent for postmortem examination under Ex.P-1 to Community Health Centre, Chindgarh where Dr. R.K.Nachankar (PW-1) conducted the postmortem on the body of Joga Madvi and prepared the postmortem report (Ex.P-1-A). After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Dantewada who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge, Bastar received the case on transfer for trial.

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4. Prosecution in order to establish the charge against the accused/appellant examined 8 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he had not assaulted Joga Madvi and he has been falsely implicated in the crime. He produced one witness namely Gorma (DW-1) in his defence. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as mentioned in paragraph – 2 of this judgment.

5. We have heard Miss Sangeeta Mishra, learned counsel appearing on behalf of the accused/appellant and Shri M.P.S. Bhatia, learned P.L. for the State.

6. Homicidal death of deceased Joga Madvi is not in dispute.

7. As far as involvement of the accused/appellant in the commission of crime in question is concerned, PW-2 Madvi Kosi, wife of the deceased, who witnessed the crime, has stated that she knew the accused who is resident of Mokpal. Her brother-in-law (*Dewar*) brought the sister of the accused for marrying her, therefore few persons from the girl side came to their village for demanding marriage expenses and assaulted Joga Madvi saying that they have not been paid the marriage expenses as a result of which her husband received injuries on his stomach and chest. They assaulted her husband with club and thereafter her husband succumbed to the injuries. From the evidence of this witness it is established that accused and other persons came to village – Mokpal, demanded the marriage expenses regarding the marriage of sister of the accused with

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the brother of deceased Joga Madvi and assaulted the deceased with club on the ground that he did not pay the expenses, as a result of which he received injuries and died. Therefore, involvement of the accused in committing the above offence is established.

8. Learned counsel for the accused/appellant argued that from the evidence of PW- 2 Madvi Kosi, the sole eyewitness and wife of the deceased, it is clear that the injuries were inflicted not only by the accused but others also and no definite opinion could be given by the doctor regarding the assailant of the fatal injury. Moreover, the injuries were inflicted by the club, therefore, it cannot be held that the accused assaulted the deceased with an intention to cause his death and as such the offence against the accused/appellant does not travel beyond Section 304-II of the IPC.

9. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

10. In order to appreciate the argument advanced by learned counsel for the accused/appellant we look into the evidence of PW- 2 Madvi Kosi, wife of the deceased who has stated that all the persons assaulted her husband with club, therefore, it is evident that apart from the accused other persons were also there who assaulted the deceased. However, there is no medical opinion regarding the fact whether the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. Looking to the background in which the Panchayat was convened where deceased expressed his inability to pay the expenses regarding the marriage of sister of the accused with his brother and the injuries inflicted on the deceased resulting in his death, it cannot be

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inferred that the accused assaulted the deceased with an intention to cause his death but from the evidence available on record it can safely be inferred that when the accused assaulted the deceased with club, he had the knowledge that he may likely to cause his death by assaulting with club, therefore, offence against the accused is made out under Section 304-II of the IPC.

11. In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside instead thereof the accused/appellant is convicted under Section 304-II of the IPC and sentenced to undergo rigorous imprisonment for five years.

12. In view of the above, M.Cr.P.No. 2939/2003 stands disposed of.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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